

Coalition Senators' Dissenting Report

Introduction

1.1 At the outset, Coalition senators commend the vital services performed by dedicated Commonwealth public servants right across Australia. Coalition senators acknowledge that public servants bring high levels of skill and dedication to their work that is often undertaken in challenging situations.

1.2 The government's workplace bargaining policy provides agency heads with a level of autonomy and flexibility over enterprise bargaining negotiations and yet at the same time, it retains some measure of control.

1.3 This is no different to the numerous bargaining policies that have been promulgated by both sides of politics over the preceding two decades. It is fanciful in the extreme for Labor senators and the Community and Public Sector Union (CPSU) to pretend otherwise.

1.4 Indeed, the APS Commissioner, the Hon John Lloyd, submitted that:

It is common practice for the Commonwealth Government to set parameters and policies that establish the scope for wage outcomes and changes to employment conditions. The policies and parameters apply to all Government agencies. This has been Commonwealth Government practice over many decades. Most State and Territory governments also guide agency bargaining with similar approaches.¹

1.5 The APS Commissioner noted that the government has three key objectives for this round of bargaining:

- moderate and responsible remuneration increases, noting that the Federal Budget has been in deficit since 2008-09;
- the removal of superfluous content and detail from enterprise agreements that compromise the capacity to efficiently manage an agency; and
- support for an employee's right to freedom of association.²

1.6 The APS Commissioner also pointed out that the government had actually lifted the wage offer and relaxed certain elements of the bargaining framework with the release of the *Workplace Bargaining Policy 2015*:

- the general wages offer was raised from 1.5 to 2 per cent per annum averaged over the life of the agreement;
- productivity gains, achieved through the removal of restrictive work practices, were recognised;

1 Australian Public Service Commissioner, *Submission 202*, p. 2.

2 Australian Public Service Commissioner, *Submission 202*, p. 2.

- the requirement to remove all non-essential content from agreements were relaxed, so long as remaining clauses did not impose restrictions on an agency operating efficiently; and
- approval requirements were simplified. Streamlined approval processes for remuneration increases and agreement content were introduced, with the approval of Ministers only required where an exemption from the policy was sought.³

1.7 As the APS Commissioner has pointed out, the government's workplace bargaining policy is clearly designed to improve and modernise workplace relations in the Commonwealth public sector. Unfortunately however, the CPSU opposes a policy that reflects the community's desire for the government to set a responsible example because it threatens its control in the workplace:

The Government policy is focused on achieving sound, modern workplace relations that engender this mutual trust and understanding. This is something that union leaders resist because they perceive it as a threat to their already diminished role in many Government workplaces.⁴

1.8 Coalition senators believe it is vital to correct the false assertions propagated by the CPSU regarding the so-called removal of existing conditions of employment. This is patently untrue, and is mere propaganda designed to confuse employees and serve the self-interested motives of the CPSU.

1.9 Contrary to the myths peddled by the CPSU, the APS Commissioner sets out the true picture quite clearly:

The bargaining policy does not require the removal or reduction of existing conditions of employment. Conditions such as annual leave, personal/carer's leave, maternity and parental leave, employer superannuation contributions and redundancy provisions are protected. Union campaigns against new agreements have conflated the removal of restrictive work practices and union privileges with the removal of employment conditions.⁵

APS remuneration

1.10 Any consideration of the government's bargaining policy must start from the premise that, as the APS Commissioner has submitted, 'public service employment conditions are generous'.⁶

1.11 Certainly the bargaining policy imposes a cap on remuneration of 2 per cent per annum. Given Australia's debt position and the corresponding budgetary constraints that the government faces, it would be fiscally irresponsible and directly

3 Australian Public Service Commissioner, *Submission 202*, pp. 2–3.

4 Australian Public Service Commissioner, *Submission 202*, p. 5.

5 Australian Public Service Commissioner, *Submission 202*, p. 7.

6 Australian Public Service Commissioner, *Submission 202*, p. 7.

contrary to community expectations for any government not to impose a fair and reasonable cap on wages growth across the public sector.

1.12 Regarding the question of community expectations, although CPSU representatives objected to the phrase contained in the bargaining policy that 'APS and Commonwealth employment conditions generally meet or exceed community standards', when presented with some real life examples, Mr Michael Tull, the Assistant National Secretary of the CPSU conceded that APS conditions do indeed exceed community expectations:

Senator McKENZIE: Sorry, Mr Tull. You might want to review the Hansard of the earlier witnesses, Dr Williamson and Professor O'Donnell, about, for instance, maternity leave. Twelve weeks paid maternity leave is the community standard and yet the range for APS employees is 14 to 18 weeks. So that looks to me—I am no industrial relations lawyer—to exceed the community standard.

Mr Tull: When you put it that way, you can certainly answer your own question in that regard...⁷

1.13 In short, the government cannot afford further additional salary increases to public sector employees and the Australian public would rightly object if such increases were granted. Beyond this, there is a risk that wage increases above productivity gains may flow through to the private sector, which does not have the same capacity to absorb costs through increased taxation or by running continued budget deficits.

1.14 Let's be clear: in the current economic climate, a 2 per cent per year pay rise over three years is entirely reasonable. Inflation in 2014-15 was 1.5 per cent.⁸ The latest ABS Consumer Price Index released on 26 October 2016 put inflation at 1.3 per cent over the year to September 2016.⁹ This demonstrates that the bargaining policy allows public service salaries to more than keep pace with inflation. Claims that the government's bargaining policy leaves public servants worse off financially frankly do not add up.

1.15 Furthermore, the latest ABS Wage Price Index shows that, over the last year, public sector wage growth of 2.3 per cent was higher than private sector wage growth of 1.9 per cent.¹⁰ The rhetoric from the CPSU that somehow private businesses are paying out higher wage rises than the government sector again does not stack up.

7 Mr Michael Tull, Assistant National Secretary, CPSU, *Committee Hansard*, 11 November 2016, p. 30.

8 The Treasury, *Pre-Election Economic and Fiscal Outlook 2016—Economic Outlook*, www.treasury.gov.au/PublicationsAndMedia/Publications/2016/PEFO-2016/HTML/Economic-outlook (accessed 25 November 2016).

9 Australian Bureau of Statistics, *6401.0—Consumer Price Index, Australia*, Sep 2016, www.abs.gov.au/ausstats/abs@.nsf/mf/6401.0 (accessed 25 November 2016).

10 Australian Bureau of Statistics, *6345.0—Wage Price Index, Australia*, Sep 2016, www.abs.gov.au/ausstats/abs@.nsf/mf/6345.0 (accessed 25 November 2016).

1.16 Let us remember too that, in addition to the annual pay rise, there are plenty of opportunities for incremental salary increases throughout the public service. This occurs by virtue of the fact that, subject to a satisfactory classification in a performance review, there is provision for further salary increases as employees advance through the increments within each APS classification. As detailed in research undertaken at the economic think tank, the Institute of Public Affairs (IPA), these annual incremental advances have the effect of boosting APS salaries for those employees by an average of \$2420.¹¹

1.17 However, beyond the opportunities for annual pay rises built into the APS system, the submission from the IPA noted that 'there is clear evidence in the ABS statistics that public sector wages are, on average, higher than the private sector'.¹²

APS allowances and entitlements

Generous APS allowances

1.18 During the inquiry, the committee received a wealth of research evidence from the IPA regarding a range of allowances enshrined in APS enterprise agreements that are particularly generous, when compared to what is on offer in the private sector.¹³ Based on the IPA's research, these allowances are detailed in the sections below.

1.19 All APS agreements contain a raft of generous allowances. These allowances have the effect of increasing salary by potentially up to tens of thousands of dollars per annum. The IPA found that these allowances are paid:

- to employees with first aid qualifications;
- to those working in regional and remote locations (even where relocation was not necessary);
- for professional development costs;
- for gym memberships;
- for financial advice;
- for child care; and
- for home office costs—amongst many others.¹⁴

1.20 Mr Aaron Lane, a Legal Fellow at the IPA, provided the committee with examples of the unique and generous allowances that are available in the public sector:

11 Institute of Public Affairs, *Submission 208*, p. 2.

12 Institute of Public Affairs, *Submission 208*, p. 2.

13 See Institute of Public Affairs, *Submission 208*; Mr Aaron Lane and Mr James Paterson, *Driving a soft bargain: Examining the Commonwealth Public Sector Enterprise Agreements 2011–2014*, Institute of Public Affairs, December 2015; Mr Aaron Lane, Legal Fellow, Institute of Public Affairs, *Committee Hansard*, 11 November 2016, pp. 12–17.

14 Institute of Public Affairs, *Submission 208*, p. 2.

The three [allowances] that we have detailed in the report, the three examples that we have pulled out—and these are just three examples; there are certainly more that exist, but the three examples we took—are fairly representative of the sorts of things that are in agreements. For example...in the Department of Health agreement you can get \$165 for your prescription eyewear. In the department of agriculture agreement, you can get flu vaccinations, for example, and also in that agreement \$300 a year for gym or fitness memberships. That is reimbursement of that particular membership, not whether you have actually attended.¹⁵

1.21 When asked about the Treasury's \$600 healthy lifestyle allowance Mr Lane responded:

Some are more; some are less. These are just some of them. That would be a middle-of-the-road figure for these sorts of agreements.¹⁶

1.22 Mr Lane also pointed out that some of the remarkable allowances available to public sector workers would clearly not align with community expectations. When an example of members of a APS departmental netball team receiving paid leave for participating in the master games was raised, Mr Lane responded:

I think these sorts of entitlements would be considered overly generous. I must admit, when doing this paper, I was surprised at the extent of some of these leave provisions. Moving house, for example, was the classic one. The Department of Defence have what is called a 'Defence day', where you get to take a day off with no reason and nothing required. It is not part of your annual leave, it is not part of your sick leave and it is not part of your personal leave. You just take a day off when you feel like it.¹⁷

1.23 Importantly, clause 21 of the government's bargaining policy provides the flexibility of restructuring allowances into the base rate of pay. As noted by the IPA, clause 21 also provides scope for negotiation to offset remuneration increases beyond 2 per cent.

1.24 Another important issue that was raised during this inquiry was whether a new leave provision should be made for those experiencing domestic violence. Representatives of the APSC clarified that victims of domestic violence already have access to leave entitlements in their agreements:

Mr Spaccavento: [Those experiencing domestic violence access appropriate leave] through other existing leave types—so, for instance, through personal leave and miscellaneous leave; there may be other forms of leave, but those would typically be the two main forms of leave that would be available.

15 Mr Aaron Lane, Legal Fellow, Institute of Public Affairs, *Committee Hansard*, 11 November 2016, p. 15.

16 Mr Aaron Lane, Legal Fellow, Institute of Public Affairs, *Committee Hansard*, 11 November 2016, p. 15.

17 Mr Aaron Lane, Legal Fellow, Institute of Public Affairs, *Committee Hansard*, 11 November 2016, p. 17.

Mr Lloyd: It is very important that every agency gives every support possible to people suffering domestic violence, and leave is available. If there is no domestic violence leave, there is no question they have access to appropriate leave under personal and carers leave or special miscellaneous leave. And that is unambiguously the policy of the government and all government employers.¹⁸

1.25 The committee received evidence that there is a broad range of policy development regarding domestic violence leave arrangements across different agencies. At one end of the spectrum is DHS which has a comprehensive policy which representatives agreed was probably 'best practice across the public service'.¹⁹ At the other end of the spectrum was the CSIRO which has a 'newly drafted policy document that formed part of the negotiations'.²⁰

1.26 Coalition senators therefore believe that it is appropriate for individual agencies to develop tailored leave arrangements that suit their particular circumstances. In this regard Coalition senators endorse the APSC initiative to develop a model domestic violence policy for agencies, based on agencies with best practice policies in place. The model policy was recently shared with agencies so they could tailor it to suit their particular circumstances.²¹ A copy of the model policy was provided to the committee.²²

Generous superannuation entitlements

1.27 All APS agreements have a generous superannuation entitlement. The Commonwealth's agreed employer superannuation contribution is 15.4 per cent. This is substantially higher than the standard 9.5 per cent Superannuation Guarantee that applies in the private sector.²³

1.28 Coalition senators are of the view that the very generous superannuation entitlements available to APS employees should be factored in when considering further remuneration increases.

18 Mr Marco Spaccavento, Group Manager, Australian Public Service Commission and the Hon John Lloyd, Australian Public Service Commissioner, Australian Public Service Commission, *Committee Hansard*, 11 November 2016, p. 45.

19 Ms Lisa Newman, Deputy National President, Community and Public Sector Union; Community and Public Sector Union Bargaining Team, Department of Human Services, *Committee Hansard*, 15 November 2016, p. 10.

20 Dr Michael Borgas, President, CSIRO Staff Association, *Committee Hansard*, 15 November 2016, p. 27.

21 Ms Stephanie Foster, Deputy Australian Public Service Commissioner, Australian Public Service Commission, *Committee Hansard*, 11 November 2016, p. 46.

22 Australian Public Service Commissioner, answer to question on notice, 11 November 2016, www.apsc.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/APSBargaining/Additional_Documents (accessed 29 November 2016).

23 Institute of Public Affairs, *Submission 208*, p. 2.

1.29 Moreover, because the entitlement is expressed as a percentage, every dollar increase in salary will translate to a greater difference in the total compensation package as compared to the private sector.

Generous leave entitlements

1.30 All APS agreements have leave entitlements that exceed those provided for in the National Employment Standards in the *Fair Work Act 2009*.²⁴

1.31 Some employees have greater than 4 weeks annual leave, and miscellaneous leave entitlements such as volunteer leave or leave for moving house further increase this entitlement.²⁵

1.32 Again, Mr Lane outlined the fact that not only are leave conditions in the public service very generous, but unlike the private sector, leave can be accrued on a year-on-year basis:

Mr Lane: Something that I can point you to in terms of the IPA's research paper, on page 15, is the personal and carers leave provisions. Under the National Employment Standards it is 10 days a year, and table 5 sets out the personal leave that is available under the various different agreements. They range from a minimum at the Department of Defence of 15 days up to 20 days, which is, obviously, double the NES. The other thing to note is that that leave entitlement is accrued. You have 20 days in one year, and, if you do not take any of those days, the following year you would have 40 days and then 60 days and so on. I think they are very generous provisions that exist under the current agreements.

Senator McKENZIE: After 10 years effectively you could, potentially, have a year off?

Mr Lane: That is my understanding.

Senator McKENZIE: Are there any other workplaces outside of the Public Service that would have that sort of provision after 10 years—you could accrue leave to ensure that you have your 11th year paid in full?

Mr Lane: Not to my knowledge. It is certainly not something I have seen in any private sector agreement.²⁶

Severance benefits

1.33 APS agreements provide extensive notice periods of up to seven months. APS employees are also entitled to a severance benefit on termination for redundancy which, in some cases, is quadruple that under the National Employment Standards in the *Fair Work Act 2009*.²⁷

24 Institute of Public Affairs, *Submission 208*, p. 3.

25 Institute of Public Affairs, *Submission 208*, p. 3.

26 Mr Aaron Lane, Legal Fellow, Institute of Public Affairs, *Committee Hansard*, 11 November 2016, p. 16.

27 Institute of Public Affairs, *Submission 208*, p. 3.

1.34 In light of the above, Coalition senators note that clause 16 of the government's bargaining policy states that 'productivity improvements can be achieved by ensuring that new workplace arrangements do not contain clauses that restrict an agency's ability to operate efficiently and effectively'.

Performance management clauses

1.35 Most APS agreements contain highly prescriptive clauses on the performance management system. This can make it difficult and time-consuming for management to dismiss underperforming employees.²⁸

1.36 For example, in one department, it takes more than 24 weeks for the mandated time-period to elapse. On top of this, the decision to terminate can then be internally and externally reviewed. This is far in excess of the equivalent provisions that apply to most private sector employers, especially smaller employers. This is also far in excess of what the Australian public would consider is a fair and reasonable process to deal with incompetent or non-performing public sector employees.

1.37 Removing these clauses would achieve productivity improvements envisaged by clause 16. This is ultimately a matter for bargaining between agencies and staff.

Union privilege

1.38 Union-privilege clauses exist in APS agreements which provide direct taxpayer-funded benefits to unions and union members. Under the agreements, union delegates can undertake their roles on taxpayer's time as well as having access to taxpayer-funded department facilities.²⁹

1.39 These union benefits go far beyond the proper role of union representation. Yet again, the government's bargaining policy provides the opportunity to trade these generous union benefits for an increase in employee remuneration.

1.40 It is likely to be of concern to the Australian public that all APS agreements entitle union delegates to paid leave to undertake union training and engage in industrial proceedings at taxpayers' expense.

The bargaining policy provides flexibility for negotiating agreements

1.41 Coalition senators are of the view that the existing generous entitlements set out in the sections above should be factored in when considering whether additional conditions are warranted.

1.42 The latitude for agency heads to negotiate and bargain over wages and conditions is amply illustrated by the case of the Australian Public Service Commission (APSC).

1.43 In June 2015, the APS Commissioner was able to offer APSC staff a 1.5 per cent per annum pay rise with no loss of entitlements or conditions. This offer was possible because the APSC had cut costs and reduced executive level staff over the

28 Institute of Public Affairs, *Submission 208*, p. 3.

29 Institute of Public Affairs, *Submission 208*, p. 3.

previous year. These cost savings and productivity gains then allowed the APSC to offer the proposed agreement while still complying with the government's bargaining policy.³⁰

1.44 The APSC was able to preserve the Christmas shutdown, leave provisions, incremental pay advances, flexible working arrangements, health and wellbeing benefits and redundancy provisions. Furthermore, the APS Commissioner was able to guarantee that staff would not be required to work extra hours.³¹

1.45 In short, the APSC was able to protect the conditions that were important to staff because it had secured the necessary saving elsewhere in its budget.

Intransigent approach to bargaining by the CPSU

1.46 Like Labor senators, Coalition senators also believe that bargaining is a two-way street. This is a fundamental principle of workplace bargaining and one to which this government's bargaining policy resolutely adheres.

1.47 The bargaining policy provides the scope for agency heads to increase the remuneration that they offer to their employees provided that those increases can be met by increases in productivity. There is nothing new or unusual about this. While it is a standard arrangement in the private sector, the quest for productivity gains in the public sector by both sides of government had once been a matter of bipartisan accord for many years.

1.48 In other words, the government's bargaining policy gives agency management the flexibility to negotiate in good faith and offset productivity gains with appropriate remuneration increase. This would, of course, require the CPSU to come to the table and negotiate in good faith. But instead, the union has come with a set of unrealistic wage demands and has been totally unwilling to offer anything in return. Any objective observation of the progress of negotiations over the last two and half years would have to conclude that union intransigence was the major factor in delaying agreement between employer and employees. During that period, many public servants have gone without any wage increase. The single biggest reason for this state of affairs has been the intransigence of the CPSU.

1.49 It is of great concern to Coalition senators that the APS Commissioner has had cause to comment on the misleading and destructive approach taken by the CPSU during this bargaining round:

The CPSU's campaign has sought to undermine the employer-employee relationship. On occasions, union material has been wrong, misrepresenting management's position. This occurred in the APSC, which we quickly countered with advice that conveyed the true management position.

30 Mr Noel Towell, 'Public Service Commission scores best pay offer', *The Canberra Times*, 2 June 2015, www.canberratimes.com.au/national/public-service/public-service-commission-scores-best-pay-offer-20150602-gheux1.html (accessed 25 November 2016).

31 Mr Noel Towell, 'Public Service Commission scores best pay offer', *The Canberra Times*, 2 June 2015.

I have been concerned about the union calling employees in some agencies 'strike breakers' simply because they were exercising their lawful right not to participate in industrial action. This reflects an attitude that pays little regard to the rights of employees and can result in unnecessary division in the workplace.³²

1.50 It is no-ones interest for this bargaining round to drag on. The government, the APS Commissioner, and agency heads would all like to see public servants get the reasonable and fair wage rises on offer. Yet the CPSU seems determined to deny APS employees this preferable outcome by pursuing a self-interested campaign against the new enterprise agreements. And all the while the union engages in a negative blame game rather than taking responsibility for its actions and the impacts that this has had on union and non-union members alike. It is difficult to avoid the conclusion that rejecting a fair and reasonable offer from management while offering nothing in return is simply hard-wired into the CPSU's DNA.

Conclusion

1.51 In summary, Commonwealth public servants already enjoy salaries and work benefits equal to or higher than community standards. As the APS Commissioner has noted, the entitlement to various forms of leave, overtime and shift penalties, remote locality allowances, assistance with childcare, travel, training and education are of a high standard. Furthermore, the employer contribution of 15.4 per cent to Commonwealth superannuation accumulation funds is well above the 9.5 per cent employer contribution for most of Australia's workforce.

1.52 As has been demonstrated by the more than 60 enterprise agreements already successfully concluded, the government's bargaining policy provides ample scope for negotiation on both sides. However, the CPSU continues to deny public servants the opportunity to accept reasonable wage offers by pursuing unrealistic pay claims and seeking additional entitlements without any consideration of trade-offs.

1.53 Coalition senators are disturbed that the CPSU has such scant regard for employee rights that it has misrepresented the bargaining policy, and in doing so, has deliberately sought to drive a wedge between management and employees.

1.54 Coalition senators call on the CPSU to start engaging constructively in the bargaining process and to end this dispute for the benefit of those public servants who are still without a concluded enterprise agreement.

1.55 In light of the above, Coalition senators are firmly of the view that the government's bargaining policy is eminently fair and reasonable.

32 Australian Public Service Commissioner, *Submission 202*, p. 4.

1.56 Finally, Coalition senators repudiate the recommendations contained in the majority report. The recommendations are based on the false premise that the government and the APSC are to blame for the difficulties experienced by the CPSU in the current bargaining round. Unfortunately the recommendations represent an unwarranted overreach by the majority committee members.

Senator Bridget McKenzie
Deputy Chair

Senator James Paterson

